

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FABRICATED METALS CO., d/b/a/
MACHINED PRODUCTS CO., an Illinois
corporation,

CIVIL CASE NO. 05-40009

Plaintiffs,

v.

MANUFACTURERS PRODUCTS
COMPANY, a Michigan corporation,

HONORABLE PAUL V. GADOLA
U.S. DISTRICT JUDGE

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION TO DISMISS DEFENDANT'S
COUNTERCLAIM and ORDER FOR DEFENDANT TO SHOW CAUSE WHY
DEFAULT JUDGMENT SHOULD NOT BE ENTERED**

Before the Court is Plaintiff's April 11, 2006, Motion to Dismiss Defendant's Counterclaim and for Entry of Default Judgment Against Defendant. The motion requests that this Court dismiss the counterclaim filed by Defendant on March 1, 2004 and that the Court enter a default judgment against the Defendant on the original claim, filed December 11, 2003. According to Plaintiff, Defendant has made it known that it will no longer defend the original action or prosecute its counterclaim.

This Court has inherent power to dismiss an action, even *sua sponte*, for failure to prosecute. *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962). A review of the record reveals no meaningful prosecution of Defendant's counterclaim. Consequently, with the goal of achieving "the orderly and expeditious disposition of cases," *id.*, this Court dismisses Defendant's counterclaim against Plaintiff.

Plaintiff's April 11, 2006 motion also seeks entry of default judgment against Defendant. Local Rule 7.1(b) for the Eastern District of Michigan requires that a "respondent opposing a motion **must** file a response, including a brief and supporting documents then available." *See* E.D. Mich. Local R. 7.1(b) (emphasis added). Such responses must conform to the appropriate deadlines. E.D. Mich. Local R. 7.1(d)(1)(B) (responses to dispositive motions are due within twenty-one days of service of the motion). Plaintiff's motion to enter a default judgment in favor of Plaintiff's original claim was a dispositive one. E.D. Mich. Local R. 7.1(d)(1)(A). *See Callier v. Gray*, 167 F.3d 977, 981 (6th Cir. 1999). Accordingly, Defendant's response was due on or about May 5, 2006. *See* Fed. R. Civ. P. 6(e).

Defendant's failure to respond leaves Plaintiff's motion unopposed. In so doing, this Court is left without justification as to why it should not grant Plaintiff's request for default judgment. Consequently, the Court will order Plaintiff to show good cause, within ten (10) days of the filing of this order, why Defendant failed to respond to Plaintiff's dispositive motion. Failure of Defendant to answer within that time may lead to an entry of default judgment in favor of Plaintiff.

ACCORDINGLY, IT IS HEREBY ORDERED that Defendant's counterclaim against Plaintiff [docket entry 1] is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute. Defendant may seek to reinstate this action within ten (10) days from the date of this order by submitting to the Court a motion showing why the above titled case should be reinstated. Such a motion must show good cause as to why Plaintiff has failed to prosecute this case.

IT IS FURTHER ORDERED that, within **ten (10) days** of the filing of this order,

Defendant shall **SHOW CAUSE** and plainly set forth in writing the reasons why Defendant failed to respond to Plaintiff's April 11, 2006, dispositive motion. Failure to answer within that time may lead to entry of default judgment on Plaintiff's claim.

SO ORDERED.

Dated: June 20, 2006

s/Paul V. Gadola

HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on June 21, 2006, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Colin T. Darke; Timothy R. Graves; David E. Plunkett, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants:

s/Ruth A. Brissaud

Ruth A. Brissaud, Case Manager
(810) 341-7845